After the teller had absconded it was discovered that his accounts were false and that he had robbed the bank for two years. It was held, however, that the failure to discover this did not render the bank liable, as the bank was not bound to examine the teller's accounts for the benefit of a depositor, who was a gratuitous bailee. In this case it appeared, also, that the absconding teller had borne an excellent reputation, that the bank officers accidentally discovered that he had on one occasion dealt in stocks, but upon inquiry of his broker had been informed that he had made one small purchase, and had done well by it; and the broker, in whom the bank officers had confidence, promised that if he dealt further the bank officers should be informed. No other dealings were heard of till after the larceny of the bonds. Upon this state of facts it was held that the purchase and sale of stocks was not *ipso facto* evidence of dishonesty; but that if the officer had been found engaged in stock gambling, or buying and selling beyond his means, he should have been immediately dismissed. Upon the whole case the judgment of the court below in favor of the bank was affirmed. The principal case differs from this case in this, that the bank officers had notice that the defaulting officer in the principal case had been *speculating* upon the board of trade, in other words gambling, which would bring the principal case directly within the authority of the case of *Scott* v. *Nat. Bank*, *supra*. Upon the whole, then, we are of the opinion that the principal case was correctly decided.

M. D. EWELL.

Chicago.

Supreme Court of Wisconsin.

IN RE PETITION OF KLAUS, &c.

The duties of a secretary of a corporation, in regard to making transfers of corporate stock, are purely ministerial, and he has no right to inquire into the motives of the parties to a transfer.

A by-law of a corporation, which prohibits the transfer of stock by a stockholder, without the consent of all the stockholders is against public policy and void. No exception can be made in the application of this rule on the ground that the stockholders of the corporation are few, and were originally co-partners, and the one against whom the by-law is invoked consented to and voted for it; nor can any exception be made as to corporations formed under chap. 144, Laws of Wisconsin, 1872, on the ground that the power to make such a by-law is to be implied from sect. 13 of that act, as the act was repealed by the revised statutes.

APPEAL from Circuit Court, Brown county.

Petition for an order compelling C. A. Willard, the secretary of the E. E. Bolles Wooden-Ware Company, a private corporation, to make a transfer of stock on the books of the company to petitioner. The order was granted and the respondent appeals.

Hudd & Wiginan, for respondent.

Ellis, Green & Merrill, for appellant.

The opinion of the court was delivered by

ORTON, J.—The petitioner, Anton Klaus, presented his affidavit to the Circuit Court, under sect. 1752 Rev. Stat., by which it appeared, in substance, that one R. A. Meiswinkle was the owner of one share of stock in the E. E. Bolles Wooden-Ware Company, and held the stock certificate thereof, and that, on the 6th day of February 1886, said Meiswinkle sold, assigned, endorsed and delivered said stock and the certificate thereof to the said petitioner. And it further appeared, by said affidavit, that on or about the day aforesaid, said petitioner applied to one C. A. Willard, who was then the secretary of said company, and in possession of the books of the same, to have said certificate duly transferred upon said books according to said assignment, and such transfer duly entered upon the same, pursuant to sect. 1751 Rev. Stat., and that said Willard neglected and refused, for more than two days, to transfer on the stock books of said company said stock, and still neglects and refuses to do so, for the sole reason that such transfer was not made with the consent of all the stockholders of said corporation. The object of the affidavit was to procure an order against said Willard to show cause why he should not enter the said transfer upon said books. The said Willard attempted to show cause by stating, substantially, in his affidavit, that the stock of said company was not transferable by endorsement and delivery, but that, according to a by-law of the company, no transfer should be made, and no new certificate issued, except by the consent of all the stockholders, and such consent had not been obtained or given to such transfer to the petitioner, and that said Meiswinkle voted for said by-law and consented thereto; and by stating further that, on the 9th day of February 1886, said certificate of stock was brought to him, with a pretended assignment on the back thereof to the petitioner, purporting to have been made on said 6th day of February 1886, and that, on information and belief, said transfer had never been delivered to him, said petitioner, but that it was brought to the affiant by one George Marsden, to whom it had been just delivered by said Meiswinkle; and that the object of the petitioner, in attempting to have said transfer entered upon the books of the company was to enable said Meiswinkle to accomplish some design of his own, and that the petitioner does not intend to become an active stockholder, or to own and hold stock for his own benefit, but purely for the advantage of Meiswinkle.

These statements, even on information and belief, do not deny the due and legal transfer, by endorsement and assignment of the stock, as stated in the petitioner's affidavit, nor the delivery thereof to the petitioner, nor the application by the petitioner for its transfer on the books, for Marsden's action was clearly on behalf of the petitioner. This would hardly be a denial of the positive statements to that effect in the affidavit of the petitioner. The other statements in the affidavit of Willard are matters of argument and not of facts material to this issue under the statute. Among the papers in the case, there is a notice by Willard, as secretary of the company, to the petitioner, dated February 9th, 1886, that he declined to enter the transfer upon the books in compliance with said by-law. This is the reason stated also in his affidavit. It is now too late to state other reasons, if even they would otherwise be valid, for his refusal. But the other reasons are entirely insufficient. Whatever may have been the motives of Meiswinkle in making his transfer, it is of no concern to Willard. His duties are purely ministerial and clerical in entering upon the books transfers of stock. He certainly has not the judicial power to pass upon the motives and intentions of the parties to the assignment of stock: *Helm* v. *Swiggett*, 12 Ind. 194; *State* v. *Smith*, 48 Vt. 266.

The only material question is as to the validity of the by-law which prohibits the transfer of the stock of the company without the consent of all the stockholders. This is an important question, but the principles involved have been so clearly established by a vast preponderance of the authorities, that I shall not attempt to treat it as an original question resting upon the general powers of a corporation, or on the reason of the rules so established. It is claimed by the learned counsel of the appellant, in his argument and brief, of great ability and plausibility, that this company is governed by chap. 144 of the Laws of 1872, and not by chap. 85 of the revision of 1878, and that sect. 13 of chap. 144, authorizing the transfer of the stock of the companies organized under said chapter, on their books, "in such form and under such *limitation* as the by-laws shall prescribe," warrants the by-law in question limiting such transfers to cases to which the consent of all of the stockholders has been obtained. That section was especially revised and superseded by sect. 1751 Rev. Stat. See Reviser's Notes, p. 137. That chapter was especially repealed by the revisers, p. 1151. By sect. 1791, Rev. Stat., it is provided that corporations

heretofore organized under any general law "shall have the same powers as if lawfully organized under this chapter, *and be governed by these statutes.*" This does not mean that such corporations shall have the same powers conferred by such general law, but such powers as it may have if organized under this chapter, and the last clause makes this meaning clear.

We must, therefore, look to the Revised Statutes as to the power of this corporation to place limitations, restrictions, conditions or prohibitions upon the free transfer of its stock upon its books. The above language is not found in sect. 1751, Rev. Stat. Such power, therefore, does not exist by virtue of any law, or by the articles of incorporation, but solely in the general power to make by-laws. But chap. 144, Laws of 1872, under which this company was organized, in many of its sections would seem to imply the free and independent right of the assignees of stock, duly transferred, to have such transfers entered upon the books of the company in all cases. Sect. 14 prescribes the liability of the assignees and assignors. Sect. 15 requires the stock books to remain open for inspection, in order to inform those interested who the present stockholders are; and sect. 17 provides that any creditor is entitled to be informed who the stockholders are. These provisions are inconsistent with the exercise of a prohibitory power of the corporation, by by-laws or the articles of incorporation, to prevent the entry of transfers of stock in the books actually made, and which are valid between the parties. There is a distinction between the stockholders, whether original or by transfer of stock, and the directors of the corporation. The directors may make by-laws—not the stockholders. The enactment of by-laws is a corporate, not an individual act.

The argument of estoppel on Meiswinkle. as a stockholder, or as an original partner in the business before it was organized into a corporation, on account of his agreement to abide by such restriction, and his assent thereto, can have no force when applied to him as a director of the company: *Button* v. *Hoffman*, 61 Wis. 20; s. c. 20 N. W. Rep. 667. The stock of this private corporation, by said sect. 13, is made *personal property*, and transferable on the books of such corporation, and by the Revised Statutes it has all of the incidents of personal property. To deny the right to have transfers of stock, actually made, entered upon the books of the corporation, would be impairing the rights and in fraud of the

creditors of the stockholders, who have the common-law right to resort to any of the property of their stockholding debtor for the satisfaction of their claims. The debtor owns the stock, by purchase and assignment of the certificate, to all intents and purposes, but such transfer is void as to his creditors, unless entered upon the books. Sect. 1751, Rev. Stat.; *In re Murphy,* 51 Wis. 519; s. c. 8 N. W. Rep. 419.

The refusal of Willard, the secretary, to enter this transfer upon the books, keeps this property of the petitioner liable for the debts of Meiswinkle, and beyond the reach of the creditors of the petitioner. This would seem to be a strong, if not a conclusive, reason that the exercise of such power of prohibition is void, as to creditors at least, and so far against public policy and unlawful.

It is again very plausibly argued by the learned counsel of the appellant, that what might be against public policy in a public or *quasi* public corporation, would not be in a strictly private corporation, and that the latter corporation was in substance only an incorporated partnership. We cannot give countenance to any such distinction. The policy of incorporating, a strictly private business, with a limited liability of the stockholders towards their creditors, is at least questionable. But when a private business or partnership has become incorporated under the general law, and greatly favored by privileges and franchises, and by restricted liability, there is no reason for making any distinction between such a corporation and others, and our statutes make none. The corporators have secured the advantages of a corporation, and they should be governed by all the other incidents of a corporation. Why not? They cannot be a corporation, and still remain in respect to the same business a copartnership; the one must completely displace the other. We cannot, therefore, be governed by any authorities which make such a distinction. The stockholders, directors and officers cannot act as partners or be personally bound as partners. The corporators, if formerly partners in the same business, and the partnership, are merged in the corporation, not partially, but fully and completely. A similar argument was made in the late case of *Bank* v. *McDonald Mfg. Co.*, 28 N. W. Rep. 225; and it was claimed that such a strictly private corporation was entitled to more legal indulgence in respect to its creditors, but such a claim was disallowed. As a partner, a person may sell his interest in the partnership property, but he does not sell his interest in the partnership as such, and he

may bind himself to his copartners by his agreement; but, as a stockholder, he is in no sense the owner or part owner of the partnership property. His stock represents his interest in the corporation and that is made property by the statute: *Button* v. *Hoffman*, *supra*. His individuality is merged in that of a stockholder. His stock is not only property, but private property, and he may do with it as he pleases. There is no community of interest in the different stockholders to form the basis of a good consideration for a contract between them as to the disposition of their stock.

Enough, and perhaps too much, has been said on general principles, and once for all we hold that a by-law of a corporation which prohibits the transfer of stock by a stockholder, without the consent of all of the stockholders, is void as against public policy. It is an unwarrantable and unlawful restriction upon the sale of personal property, the sale and interchange of which the law favors, and in restraint of trade. I have already said that the transfer is valid to all intents and purposes, as between the parties, without the entry thereof in the books of the company. So the statute provides (sect. 1751, Rev. Stat.), but, as to third persons and the public, it is void, unless so entered in the books. Its sale, full and complete, may thus be prevented by the will and at the option of another who has no interest in it. The claim is against all reason and justice. When the law makes stock personal property, it clothes it with all the incidents of personal property, and the owner has full dominion over it, and may dispose of it at will. That such a by-law as that under consideration is void as against public policy, nearly all of the authorities seem to hold: Ang. & A. Corp., sect. 567; Low Transf. Stock, sect. 48; *Bank of Attica* v. *Manufacturers' and Traders' Bank*, 20 N. Y. 501; *Sargent* v. *Ins. Co.*, 8 Pick. 90; *Chouteau S. Co.* v. *Harris*, 20 Mo. 382; *Quiner* v. *Ins. Co.*, 10 Mass. 476; *Bond* v. *Mt. Hope Co.*, 99 Id. 505; *Case* v. *Bank*, 100 U. S. 446; and many cases cited in brief of respondent's counsel, and many more that might be cited.

It is claimed that this case ought to be made an exception, because the original stockholders were the former copartners, and they three ought to have the right to choose their associates in the business, as it took all of them to be directors and officers. That might be so in this case, but the principle would not apply to other cases of private corporations where the stockholders were more numerous, and hence there would be an exception to a general

rule for personal reasons. But it is not proper to say that stockholders, as such, are associates in the management of the business. They have nothing to say about the business, any further than to protect their interests. The directors and officers manage the business. As stockholders, they are in no sense partners.

We are satisfied that the Circuit Court decided correctly, and properly granted the order to compel the secretary, Willard, to enter the transfer of this stock to the petitioner in the books of the corporation. The order of the Circuit Court is affirmed.

Prohibitions of the Transfer of Stock.—Stock in corporations, being a species of personal property, the owner of it has all the rights which are incident to the ownership of personal, and indeed any kind of property. Especially has he the right to dispose of it by sale, gift, or bequest. As remarked by Judge Adams, in *Moore* v. *Bank of Commerce*, 52 Mo. 377–379, speaking of stock in corporations: "The right of alienation is an incident of property, and a by-law prohibiting this right, or imposing any restrictions on its exercise, would be in restraint of trade and against public policy, and therefore void." This is the general rule with reference to shares in companies. And besides the reason of public policy which underlies it, it may be pointed out that one of the very reasons why corporations are created, is in order to enable persons to take shares, preserving to themselves the right to dispose of such shares at their pleasure, thus to relieve themselves of responsibility for the company: *Weston's Case*, *In re Smith, Knight & Co.*, L. R., 4 Ch. 21. See, also, *Gilbert's Case*, 5 Id. 559.

Illustrating the general rule that a shareholder has the right to dispose of his stock as he pleases, reference may be made, also, to the following authorities: *Sargent* v. *Franklin Ins. Co.*, 8 Pick. 95, wherein it is held that shares of stock are personal property which may be conveyed by will, or might descend from an intestate to his heir, and which may be acquired without deed, by a delivery of the certificate with an endorsement upon it for a valuable consideration, and that in such cases, the legatee, heir or assignee, would be entitled to have the transfer made in the books, and to a certificate of his property. Accordingly held, that a by-law which limits the transfer of stock to be made only at the office personally, or by an attorney and with the assent of the president, would be in restraint of trade, and contrary to the general law of the commonwealth, which permits the right to personal property and incorporeal hereditaments to be transferred in various other ways.

Weston's Case, wherein it is held that the directors of a corporation have no power to refuse to permit a transfer of stock, because the address of the transferee is not correctly given: *Weston's Case*, *In re Smith, Knight & Co.*, L. R., 4 Ch. 21. And even where the transfers of stock are made to add to the voting powers of a certain class of stockholders, this does not authorize the directors to refuse to register such transfers when they are made in good faith: *In re Stranton I. S. Co.*, L. R., 16 Eq., 559. The same view was taken in *C. & A. Rd.* v. *Elkins*, 37 N. J. Eq. 274, wherein it was held, that directors of a corporation, who act in office. cannot dispute the right of a stockholder to have a new eleetion of directors held in accordance with the by-laws, on the ground that the stockholder bought his stock with the money of rival companies, and intended to use his legal

rights as a holder of a majority of capital stock, for purposes detrimental to the interests of the corporation, and that the proposed election of directors is a step towards the illegal control of the property and the business of the corporation.

In another case, a company with unlimited liability was formed in 1843, under a deed of settlement, and was afterwards provisionally registered, 7 & 8 Vict. c. 110. By their deed of settlement no shareholder was to have more than twenty votes, however large the number of shares held, and the directors had power to approve or disapprove of any person proposed by a shareholder as transferree of his shares. A difference arose among the shareholders as to the management of the company, and the plaintiff, who was a large shareholder, transferred some of his shares to one person, for value, and other shares to another person, as trustee for himself, in order to increase his voting power. The directors refused to approve of the transfers, not from any personal objection to the transferrees, but on the ground that the transfers were colorable, and were intended to increase the votes of the transferror; held, that the company was not a mere partnership, but came within the laws applicable to joint-stock companies; and that the directors had no power to refuse a transfer, which was a right of property, except on personal objection to the transferree. They were, therefore, ordered to approve of the transfer: *Moffat* v. *Farquhar*, 7 Ch. Div. 591. As this case suggests there would probably be a different rule applied in the case of transfer of shares, in a partnership, which, although possibly like a company, in respect to having shares of capital stock (ordinarily, however, partnerships are not organized with shares of stock), are yet unlike a company in this: In a partnership there is an element of personal association which furnishes a reason, and confers a right to each partner to object to the admission into the firm, of persons who may be personally disagreeable to the objecting partner, while in a corporation no such element or right ordinarily exists. We say "ordinarily" advisedly, for there are companies in which, by the charter, a right is reserved to directors to pass upon the qualifications of proposed members. And under such circumstances it has been held that the directors are not bound to disclose their reasons for rejecting a transferree, which the charter gives them power to reject, provided they have fairly considered the question at a meeting of the board, and in the absence of evidence to the contrary, the courts will take it for granted that the directors have acted reasonably and in good faith, in refusing to sanction a transfer: *In re Gresham Life Ins. Society, Ex parte Penney*, L. R., 8 Ch. 446.

But while the proposition may be accepted as settled, that when the charter of the corporation authorizes, the directors of a company may refuse to sanction the transfer of its stock, such power of the directors must be exercised reasonably, they cannot arbitrarily refuse. This was decided in *Robinson* v. *Charter Bank*, L. R., 1 Eq. Cas. 32, in which case it was queried whether it is a reasonable ground of objection to transfer of stock, that the proposed transferree is nominee of a rival bank, with which the shares have been deposited as security. A similar ruling was made in *Smith* v. *Canada Car Co.*, 6 U. C. P. R. 107, in which case RICHARDS, C. J., said of the directors: "I do not think they have any such power; if permitted to exercise such power they would, in effect, prevent the transfer of shares, which the statute and charter clearly contemplate, and arbitrarially control the value of the property of the stockholders." And the learned chief justice further intimated, that when no reason is assigned for the refusal of the directors to permit a transfer of stock, mandamus ought to go to compel them to do what they ought to do.

But persons buying stock, in order to bring actions for past wrongful acts of directors, are not favored by courts of equity, or of law. "Such parties are regarded as interlopers, seeking to dispute the rights of innocent holders of stock to their prejudice, and should not be allowed to have or retain injunctions when their rights can be preserved by awarding damages for such injury as they may have sustained." See also, *The Queen* v. *Liverpool, Manchester, &c., Rd.*, 21 L. J., Q. B. 284.

We conclude this branch of the subject under consideration, by affirming the general rule to be, that stockholders have an unquestionable right to alien or dispose of their stock according to their own wishes. By this, however, it is not meant to say that the transfer of stock may not be regulated so as to protect the company and its stockholders against fraudulent transfers of stock, or so as to secure to the company payment by a stockholder desiring to transfer his stock of any debt due from him to the company, whether such debt be an unpaid balance due on the stock he wishes to transfer, or any other debt. For these purposes, a company may require transfers to be registered on its books, and the law on this subject is illustrated by a multitude of authorities. See, amongst others, *Chouteau* v. *Harris*, 20 Mo. 383; *Moore* v. *Bank of Commerce*, 52 Mo. 377; *Sargent* v. *Franklin Ins. Co.*, 8 Pick. 90; *Hibernia Ins. Co.* v. *N. O. Transp. Co.*, 13 Fed. R. 516; *Hazard* v. *National Bank of Newport*, 26 Fed. R. 94; *Robinson* v. *Chartered Bank*, L. R., 1 Eq. 32; and many other decisions may readily be found. But in them the power to *regulate* the transfer of stock is clearly distinguished from the power to *prohibit* such transfer. Reasonable regulation is well established by argument, equity and precedent. Prohibition, on the other hand, is clearly contrary to law and public policy.

ADELBERT HAMILTON.

Supreme Court of Minnesota.

HAMLIN *v.* SCHULTE.

Where a real estate broker is employed to find a purchaser of real estate, but not to execute a contract on behalf of the seller, he is entitled to his commissions where it appears that he has found a purchaser ready, able and willing to complete the purchase, in accordance with the terms agreed upon, between the broker and the owner, although the latter is unable to consummate the sale by reason of his wife's refusal to sign the deed.

ASSUMPSIT brought by real estate brokers to recover commissions for procuring a purchaser of certain real estate of defendant upon the terms set by him. Plaintiffs made a written contract on behalf of the parties to the contract, in which it was provided that the wife should join in the deed, which was read to defendant, and assented to by him. It appeared that she refused to join, and defendant was thereby unable to carry out the contract. All the transactions leading to the agreement were conducted by plaintiffs. The defendant denied his liability, and judgment was entered for him, whereupon plaintiffs appealed.